

Senate Bill 133
March 3, 2011
Presented by Joe Maurier
House Fish, Wildlife and Parks

Mr. Chairman and committee members, I am Joe Maurier, Director of the Montana Department of Fish, Wildlife & Parks (FWP). I am here to provide testimony in opposition to Senate Bill 133, as written.

FWP agrees with the sponsor, Senator Barrett, that persons participating in hunting, fishing, or trapping should not be harassed, threatened, or intimidated. However, FWP's review of SB133 identifies too many inadvertent consequences to justify supporting the bill as drafted.

Both SB133 and SB115 passed the senate. SB115 solves the problems that SB133 tries to address and does not have the inadvertent consequences that SB 133 has. SB115 prevents FWP from disclosing without prior written consent any information that identifies any person who has lawfully taken a large predator during a hunt. SB115 also finds that this protects an individual's privacy, safety, and welfare and therefore can outweigh the public's interest in the information. SB115 addresses the only hunters that have been, or are likely to be, harassed. Some hunters who killed a wolf have been harassed to some degree.

Without amendments, SB133 still contains too many pitfalls. For FWP to adhere to its statutory responsibilities, SB133 would need additional amendments.

For example, to allow FWP personnel to internally administer licensing functions and to provide maps and information to individual license holders in specific hunting districts. FWP proposes amending SB133 on page 3, line 9, to read that confidential information "may not be released or disclosed to any person other than department personnel" without prior written consent of the applicant or an order from a court. Further, FWP proposes adding a subsection (c) on page 3 after line 15. This new subsection would clarify SB133 to allow FWP to use the name, telephone number, and address of a license holder for hunting, fishing, and trapping surveys that provide critical data to inform management decisions.

To continue to provide information to hunters in ways that are convenient and effective, such as information on the internet of drawing success, bonus points for drawing, damage hunt roster status, and holders of hunter safety certificates, the department would have to redesign its automated licensing system (ALS) by providing a personal log in for each individual license holder.

The Department presently provides a considerable degree of protection of a person's privacy. The Department does not release the social security number, age, date of birth, ALS number, phone number, employer, height, weight, and eye or hair color of any license holder in response to public inquiries. Also, the Department provides any license applicant the opportunity to opt out of mailing lists which the Department is otherwise required by statute to provide to anyone making a request for the purpose of solicitations.

The Department recognizes and appreciates the sponsor's intentions to strengthen the hunter and fisher harassment statute. This statute was narrowly written in 1987 to regulate conduct, the physical interference with hunters rather than speech. Regulating speech, as the amendments in SB133 do, would unconstitutionally criminalize a substantial amount of speech protected by the

1st Amendment to the U.S. Constitution. The Montana Supreme Court, in overturning a state district court ruling, found the hunter harassment statute was constitutional because it regulates conduct for safety rather than impermissibly regulates speech or conduct based on the message conveyed.

SB133's amendments to the hunter harassment statute cross this constitutionally drawn divide and may undermine the presently strong constitutional footing of the entire hunter harassment statute. Therefore FWP also proposes striking Sections 2 and 3 on pages 3 and 4.

For the above reason, FWP does not support SB133 because, while FWP agrees with the intentions of Senator Barrett, the bill is both unnecessary and inadvertently harmful.

PROPOSED Amendments to Senate Bill 133

1st Reading Copy

Requested by

For the house Fish and Game Committee

Prepared by

March 3, 2011

1. Page 3, line 9.

Following: "person"

Insert: "other than department personnel"

2. Page 3, line 15.

Following: "L. 2001.)"

Insert: "(C) THIS SUBSECTION (13) DOES NOT RESTRICT THE USE OF THE NAME, TELEPHONE NUMBER, AND ADDRESS OF A LICENSE HOLDER FOR THE PURPOSE OF HUNTING, FISHING, AND TRAPPING SURVEYS AND OTHER SURVEYS BY THE DEPARTMENT PROVIDED THE INDIVIDUAL 'S INFORMATION IS NOT RELEASED OR DISCLOSED TO ANY PERSON OTHER THAN DEPARTMENT PERSONNEL, SURVEY CONTRACTORS, AND THE INDIVIDUAL WHO IS ASKED TO PARTICIPATE IN THE SURVEY."

3. Page 3, line 13.

Following: "FOR":

Insert: "INVESTIGATION AND"

4. Pages 3 and 4, line 17, page 3 through line 7, page 4.

Strike: Sections 2 and 3 in their entirety.